Fiscal Law Primer

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Basic Principles

U.S. Constitution

Congress has Power of the Purse

Purpose	Time	Amount
31 U.S.C. § 1301(a)	Bona Fide Need	$$$$$
Necessary Expense Rule:	31 U.S.C. §§ 1552 & 1334	Cannot exceed the amount
Expense Must Relate to Mission	Properly Incurred Expense	authorized by Congress

The requirement must be a bona fide need of the requiring activity arising during the period of availability

Authority-PTA

- Authority
  - Purpose
  - Time
  - Amount

Basic Principles

There is no authority to use Federal Appropriations without specific statutory authority.

Basic Principles

"The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress." (United States v. MacCollom, 426 U.S. 317, 321 (1976)).

Basic Principles

- Legislative Branch makes funds available by appropriations acts
- Executive Branch subsequently releases the funds by administrative actions

Basic Principles

"Availability" of appropriations governed by:

- appropriation act itself
- other legislation
- general statutory provisions
- decisions of the Comptroller General
- decisions of the courts

The U.S. Constitution

The United States Constitution assigns control over financial matters to the Legislative Branch of government -- The Congressional Power of the Purse

The U.S. Constitution

Article I, Section 8, Clause 1 - The Power to Tax and Spend

"The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States..."

The U.S. Constitution

Article I, Section 9, Clause 7 - The Appropriations Clause

"No Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

The Militia Clause

- Article 1, Section 8, Clause 16
- “To Provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;"

The U.S. Constitution

Congressional financial powers extremely broad. Congress may limit a recipient's use of federal appropriations to those purposes it chooses to subsidize. (Rust v. Sullivan, 111 S.Ct. 1759 (1991))

Fiscal Controls

- Purpose – color of money (Purpose Statute)
- Time – availability (Bona Fide Needs rule)
- Amount – sufficient (Anti-Deficiency Act)

The “Purpose” Statute

- 31 U.S.C. § 1301(a)
- “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”
- Enacted in 1809

First Step in Analysis

- What is the AUTHORITY for the expenditure?
- Not: Where does it say the expenditure can't be made?

Authorization vs. Appropriation

- Different amounts - ANG O&M
  - Appropriations Act = $4, 472,738,000
  - Authorization Act = $4,503,338,000
  - Use Appropriations Act amount
- Different statements of purpose
  - More restrictive language controls

USE OF NATIONAL GUARD FUNDS
O & M, Air National Guard

- **For expenses of training,organizing, and administering the Air National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, and repairs to structures and facilities; transportation of things, hire of passenger motor vehicles; supplying and equipping the Air National Guard, as authorized by law; expenses for repair, modification, maintenance and issue of supplies and equipment, including those furnished from stocks under the control of agencies of the Department of Defense; travel expenses (other than mileage) on the same basis as authorized by law for Air National Guard personnel on active Federal duty, for Air National Guard commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau, $4,831,185,000 .**

USE OF NATIONAL GUARD FUNDS
O & M, Army National Guard

- For expenses of training, organizing, and administering the Army National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, and repairs to structures and facilities; hire of passenger motor vehicles; personnel services in the National Guard Bureau; travel expenses (other than mileage), as authorized by law for Army personnel on active duty, for Army National Guard division, regimental, and battalion commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau; supplying and equipping the Army National Guard as authorized by law; and expenses of repair, modification, maintenance, and issue of supplies and equipment (including aircraft), $4,323,783,000.

USE OF NATIONAL GUARD FUNDS
National Guard Personnel, Air Force

- For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air National Guard on duty under section 10211, 10305, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $ 2,067,752,000.

USE OF NATIONAL GUARD FUNDS

National Guard Personnel, Army

- For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army National Guard while on duty under section 10211, 10302, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under 12301(d) of title 10 or section 502(f) of tile 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $4,751,971,000.

502(f) of Title 32

- (f) (1) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may--
  (A) without his consent, but with the pay and allowances provided by law; or
  (B) with his consent, either with or without pay and allowances;
  be ordered to perform training or other duty in addition to that prescribed under subsection (a).
  (2) The training or duty ordered to be performed under paragraph (1) may include the following:
  (A) Support of operations or missions undertaken by the member's unit at the request of the President or Secretary of Defense.
  (B) Support of training operations and training missions assigned in whole or in part to the National Guard by the Secretary concerned, but only to the extent that such training missions and training operations--
  (i) are performed in the United States or the Commonwealth of Puerto Rico or possessions of the United States; and
  (ii) are only to instruct active duty military, foreign military (under the same authorities and restrictions applicable to active duty troops), Department of Defense contractor personnel, or Department of Defense civilian employees.
  (3) Duty without pay shall be considered for all purposes as if it were duty with pay.

709(a) of Title 32

- (a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsections (b) and (c), persons may be employed as technicians in--
  (1) the organizing, administering, instructing, or training of the National Guard;
  (2) the maintenance and repair of supplies issued to the National Guard or the armed forces; and
  (3) the performance of the following additional duties to the extent that the performance of those duties does not interfere with the performance of the duties described by paragraphs (1) and (2):
    (A) Support of operations or missions undertaken by the technician's unit at the request of the President or the Secretary of Defense.
    (B) Support of Federal training operations or Federal training missions assigned in whole or in part to the technician's unit.
    (C) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of--
      (i) active-duty members of the armed forces;
      (ii) members of foreign military forces (under the same authorities and restrictions applicable to active-duty members providing such instruction or training);
      (iii) Department of Defense contractor personnel; or
      (iv) Department of Defense civilian employees.

Where Do You Find Authority?

- Appropriations Acts
  - FY 2007 Defense Appropriations Act, P.L. 109-289
  - 1st FY 2007 Continuing Resolution, P.L. 109-289

Authorization Acts

- Do not provide budget authority
- But (theoretically) needed to appropriate, obligate, and expend

Determining Purpose

- The Test
  - Expenditure is for the particular purpose set forth in the Appropriations Act or is necessary and incident to the stated purpose
  - Expenditure is not prohibited by law
  - Expenditure is not provided for in some other appropriation

Necessary Expense

- Reasonably necessary in carrying out an authorized function or will contribute materially to the effective accomplishment of that function

IRS Credit Union ATM

- Could IRS provide appropriations for credit union ATM where ATM not specifically authorized in statute?
- 12 U.S.C. §1770, authorizes agencies to provide space & "services" to credit unions w/o charge
- ’Services' includes, but not limited to, light, heat, cooling, electricity, office furniture, machines & equipment, telephone service, & security systems

IRS Credit Union ATM

- Statute does not define precisely what services may be provided; "includes, but is not limited to" language means authority not limited to only those items specified
- Expenditure permitted under Necessary Expense test; is reasonably necessary to carry out authorized function or will contribute materially to effective accomplishment of function, and if not otherwise prohibited by law

Personal Items

- Not normally a Necessary Expense
- Must have specific statutory authority

Clothing

- COE/Union agreed that COE will buy and supply insulated coveralls to employees who work outside when temp or wind chill below 35
- Coveralls would remain property of US
- May the COE use appropriations to purchase coveralls in compliance with the agreement?
- No, clothing considered a personal expense of employee, and appropriated funds not available without clear statutory authority (may be okay under OSHA if agency properly documents)

Novelty Items

- May NGG-AQC use O&M funds to buy small bags of candy shaped like coins for distribution at its exhibit table at a Gov't-industry conference? What about key chains with NGB logo?
- No; these items are personal gifts, not ordinary and necessary expenses of accomplishing an authorized purpose
- *See* Novelty Garbage Cans Distributed by EPA, 57 Comp. Gen. 385 (1978)

Personal Items

- May appropriations be used to purchase items of nominal value (T-shirts, baseball caps) to give to prospective ANG recruits?

Personal Items

- Yes; if part of authorized recruiting program
- See 10 U.S.C. § 503 (The Secretary of Defense shall act on a continuing basis to enhance the effectiveness of recruitment programs of the Department of Defense (including programs conducted jointly and programs conducted by the separate armed forces) through an aggressive program of advertising and market research targeted at prospective recruits for the armed forces and those who may influence prospective recruits)

Authorized by Statute

- 5 U.S.C. § 7903 - special clothing to protect against hazards
- 10 U.S.C. § 1593 - clothing allowance for DoD civilian employee required to wear a uniform for official duties
- 29 U.S.C. § 668 - protective equipment & clothing to comply with OSHA

Food

- GSA FTR, 41 C.F.R. § 301-74.11, permits use of funds for light refreshments at official conferences for breaks
  - E.g., coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins
- As certifying officer can you certify appropriated funds to pay for light refreshments per the GSA FTR?

Light Refreshments

- National Institutes of Health – Food at Government-Sponsored Conferences, B-300826, March 3, 2005
- Gov't agencies may pay for legitimate, reasonable conference costs, including meals and light refreshments, of a formal conference.
- Agency cannot charge a fee and retain proceeds to defray costs of meals and light refreshments.
- Exception: statutory authority

Light Refreshments

- Criteria for allowing conference fee costs are: 1) meals and refreshments are incidental to the conference; 2) attendance at the meals and when refreshments are provided is important for the host to ensure full participation in the conference; and 3) other substantial functions occur separately from when food is served.
- Presence of private citizens or federal employees from other agencies does not change analysis.

Decorations and Greeting Cards

- Personal Christmas cards are not authorized
- Seasonal decorations authorized

Telephones

- 31 U.S.C. § 1348
- Appropriations not available for phones in private residences
  - Statutory Exception: DOD appropriations available to install, repair, and maintain telephone wiring in residences owned or leased by U.S. and, if necessary for national defense purposes, in other private residences

Cell Phones

- Reimbursement for official use of personal cell phones
- Appropriations may be used to reimburse for actual cost of official calls only

Awards

- 10 U.S.C. § 1125 - authority for awards for service members
- Implementing regulations, AFI 65-601, vol. 1, para 4.29 and AR 600-8-22, must be followed

Awards

- Mission Accomplishment - AFI 65-601, vol 1, para 4.29.2
- Special trophies & awards authorized by AFI 36-XXXX series of instructions re mission accomplishment or a Base supplement
- Includes trophies, plaques, emblems, certificates, organizational COINS, etc.
- Jackets, belt buckles, other merchandise with nominal cost and unit or activity logo

Unit Coins - Appropriated Funds

- Pursuant to awards program authorized by regulation
- For mission accomplishment
- Do not personalize coins
- Not for:
  - Personal gifts
  - Tokens of appreciation

Other Personal Items

- Gifts
- Fines
- What about Licenses and Certificates?
  - Recent amendment to 5 U.S.C. 5757 allows for some expenditures related to obtaining professional credentials

Legal Services

- An agency or department needs approval from the Attorney General to contract for outside legal services.
- Army GC determined that legal advice to DA is inherently governmental.

Augmentation of Appropriations

- Use one appropriation to pay costs for purpose of another appropriation
- Use funds from outside source to pay costs for purpose of an appropriation
- Retaining funds may violate Miscellaneous Receipts Statute, 31 U.S.C. § 3302
- Expending funds violates the Purpose Statute

Detail of Employee

- May an AFR civilian employee be detailed to ANG personnel office as part of settlement of an EO lawsuit, where there is no reimbursement by ANG to AFR?
- No; this would be an unlawful augmentation of ANG appropriation

Federal Employees and National Guard Duty

- May a federal employee use official time and equipment for ANG purposes?
- Yes; an agency may permit some use of employee time and agency equipment for limited, incidental ANG functions
- Matter of Lorraine Lewis, B-277678, 1999 WL 54498 (Comp. Gen.)

Miscellaneous Receipts Statute

- 31 U.S.C. § 3302(b)
- “ . . . An official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.”

Miscellaneous Receipts Statute

- Statutory Exceptions
  - Economy Act - requires ordering agency to reimburse
  - Revolving Funds (10 U.S.C. § 2208)
  - Forfeited bonds to fund replacement contracts (16 U.S.C. § 579c)
  - Recovery of military pay and allowances (42 U.S.C. § 2651)

Miscellaneous Receipts Statute

- More Exceptions
  - Military leases of real and personal property (10 U.S.C. § 2667(d)(1)
  - Damage to real property (10 U.S.C. § 2782)

Miscellaneous Receipts Statute

- GAO Exceptions
  - Replacement contracts
  - Refunds for erroneous payments, overpayments, advances
  - Receiving property other than cash

Case Study

- Are National Guard units authorized to provide training, support, or supplies to state and community first responders?
- Short answer: There is no legal authority to provide training, support, or supplies to state and community first responders.

Case Study References

- US Constitution, Art I, Sec 8, Clause 16
- U.S.C. Title 32, Section 102
- Perpich v. US, 496 U.S. 334, n. 3 (1990)
- U.S.C. Title 32, Section 709(a)(3)
- U.S.C. Title 31, Section 1301(a)
- United States v. MacCollom, 426 U.S. 317, 321 (1976)

- Prepared by MAJ Tim Ryan

- REVIEW

TIME

Timing Concepts

- Birth
- Life Span
- Death

Statutes

- Birth Concept
- 31 U.S.C. § 1341(a)(1)(B) - Funds may not be obligated before signature of Appropriations Act and receipt from OMB through higher headquarters
- Annual Appropriations Acts

Statutes

- Life Span Concept
- 31 U.S.C. § 1301 - Appropriations available for obligation during year in which appropriated - life span of funds is fiscal year in which appropriated
- Presumed available for obligation for one year - unless Congress says otherwise, life span is one year

Statutes

- Death Concept
- 31 U.S.C. § § 1502 & 1552
  - When funds expire, they are no longer available for new obligations
  - Expired funds retain their fiscal year identity for five years after stated period of availability ends

Statutes

- 31 U.S.C. § 1552
  - Expired funds are only available for adjusting and liquidating obligations previously made during the appropriation's stated period of availability
  - After 5 years in expired status, the account closes and the remaining balance (obligated or unobligated) is cancelled
  - Cancelled funds are not available for any purpose
- Rule: funds may not be obligated before born, must be obligated during life span, may not be obligated after death

Regulations

- DFAS-IN Regulation 37-1, Finance and Accounting Policy Implementation
- National Guard Pamphlet 37-1, Financial Management Guide for National Guard Executives
- AFI 65-601
- DoD Reg. 7000.14-R, Financial Management Regulation

Period of Availability

- Operation & Maintenance (O&M) Funds - 1 year
- (RDT&E) Funds -2 years
- National Guard & Reserve Equipment - 3 years
- Procurement Funds - 3 years
- Construction - 5 years
- Stock and Industrial Funds -Indefinite (No Year)
- Multi-Year - up to 5 yrs; depends on program
- O&M, Humanitarian Assistance -- 2 years
- O&M, Goodwill Games -- 2 years

Exception (Life after Death #1)

- 31 U.S.C. § 1558
- Protests – Pre-award or Post-award
- To GAO or in Court
- Funds available at the time protest filed in connection with award
- Remain available for 100 days after date of final ruling

Protest Exception

- 31 Aug 2004 protest of bidding process
- 20 Sep 2004 TRO obtained from court
- 10 Oct 2004 Permanent injunction denied; law suit dismissed
- Funds live (as current funds available for new obligations) for 100 days after 10 Oct 2004

Exception (Life after Death #2)

- Terminations for Default
  - Bona fide need still exists
  - Reprocurement contract entered into without undue delay
  - Substantially the same item or service
  - Additional costs - may use original year's funds (treat as current rather than expired funds) after death

Exception (Life after Death #3)

- Termination for Convenience
  - In response to a court order
  - Determination by GAO/other authority that award was improper
  - Determination by contracting officer that award was clearly erroneous

Termination for Convenience

- Funds Remain Available if:
- Original award made in good faith
- Agency has continuing bona fide need
- Replacement is same size and scope
- No undue delay
- Contracting officer - written determination

Bona Fide Need Rule

- 31 U.S.C. § 1502(a)
  - Appropriation limited for obligation to definite period is available only to pay expenses properly incurred during the period of availability
  - To complete contracts properly made within that period of availability and obligated under 31 U.S.C. § 1501
  - Appropriation not available beyond the period authorized by law

Bona Fide Need Rule

- Funds may only be obligated for bona fide need arising during the period of availability
- Funds may be appropriated only for a “need” arising during their life span

Bona Fide Need Rule Practical Considerations

- Bona fide needs inquiry focuses on the timing of the obligation
- Whether obligation is for a current need of the government - a “need” that exists during the life span of the funds
- Need of government and nature of product/service determine when bona fide need arises

Bona Fide Need Rule

More Practical Considerations

- "Bona fide need" has meaning only for fiscal law analysis; N/A to analysis of contract specifications
- Determining bona fide need requires use of judgment
- Each bona fide need determination is fact-specific
- Bona fide need determined at time of obligation

Bona Fide Need Rule Supply Contracts

- Determined by date the government actually requires the supplies
- Funds obligated for the fiscal year in which supplies will be delivered for use
  - Supplies to be delivered and used during life span of funds
- Supplies to be used in future fiscal year are the bona fide need of the later year

Lead Time Exception (Supply Exception #1)

- Consider normal production lead-time in determining bona fide need
- If the government establishes a delivery date for an item that is beyond the normal lead-time and in the next fiscal year, funds for the next fiscal year must be used

Stock Level Exception (Supply exception #2)

- Purchase sufficient supplies necessary to maintain adequate and normal stock levels
- Use current year funds even though replacement stock may not be used until following fiscal year
- Stockpiling in excess of normal usage requirements is prohibited

Bona Fide Need Rule Service Contracts

- General rule: bona fide need for services arises when services are rendered
- Services must be provided during life span of funds

Nonseverable Exception
Services - Life after Death #1

- A single or unified outcome, product, or report
- Entire effort may be funded with funds available at the time the contract is executed, even if it crosses fiscal years

Service Contracts Severable

- Trucking services
- Gardening and window cleaning
- Clerical services
  - General rule is that severable services must be furnished during the life span of the funds obligated for them

Statutory Exception
Services - Life after Death #2

- 10 U.S.C. § 2410a
  - The Secretary of Defense, the Secretary of a military department ... may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year. (cont'd)

Statutory Exception
Services - Life after Death #2

- Allows military depts to enter into severable services contracts for period that begins 1 FY and ends next FY
- If the contract period does not exceed one year
- Funds available for a fiscal year may be obligated for the total amount

Multiple Year Funds/Contracts

- Annual DoD Appropriations Acts typically contain the following:
- No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year, unless expressly provided herein.

Multiple Year Funds

- Definition: expressly provide that they remain available for obligation for a definite period in excess of one fiscal year

Multiple Year Contracts Allowed

- No-year funds
- Multiple-year funds covering contract period
- Specific statutory authority
  10 U.S.C. 2306(g)
  40 U.S.C. 481(a)(3)

Multiple Year Funds

- DoD funds usually include:
  - O&M, Humanitarian Assistance -- 2 years
  - O&M, Goodwill Games -- 2 years
  - NG & Reserve Equipment -- 3 years
  - Procurement Appropriations -- 3 years
  - (RDT&E) Appropriations--2 years
  - Chemical Agents and Munitions Destruction, Defense --various periods
  - Military Construction Appropriations -- 5 years

Multiple Year Funds

- The language typically used by the Congress is ".... to remain available for obligation until September 30, XXXX.“

Multiple Year Funds Statutory Controls

- The bona fide need rule, 31 U.S.C. § 1502(a)
- Multiple year appropriation may only be expended for obligations properly incurred during the period of availability
- Exceptions to the bona fide need rule for lead time and stock levels apply (limited by administrative policies).

Multiple Year Funds

- Administrative Controls: Program Objectives
  - Procurement appropriations: have all the necessary funding in hand before obligating funds on a procurement contract to ensure stable production runs and lower costs
  - RDT&E appropriation: dribble out funding among various programs, giving more to those programs showing progress and withholding from those programs going nowhere

Full Funding Policy

- At time of award, funds available to cover total estimated cost
- If future-year appropriation required contract not fully funded
- Ensure amount requested each yr will buy specific quantity; discourage hiding total cost by cost- splitting

Full Funding Policy Contract Terms

- May initiate acquisition only if funds for total estimated cost of program quantity are available
- Acquisition need not be for total quantity, nor for usable end items
- May divide quantity among several contracts
- May award several contracts for non-end items to be provided as GFE for inc. into end item
- If future-year appropriation required for delivery of usable end items, program not fully funded

Exception

- Long Lead-time Items
  - components, material, parts, and effort
  - significantly longer lead-time than other items
  - cost of advanced procurement items relatively small compared to costs of end item
  - for one fiscal year's program increment

Exception

- Advanced Economic Order Quantity (EOQ)
  - components, materials, and parts for up to 5 fiscal years' program increment
  - to obtain the economic advantage of multi-year procurements
  - may obligate termination costs or entire cost, if cheaper
  - EOQ costs may be included in an unfunded cancellation clause

Full Funding Policy

- Full funding policy is not statutory-- Violations do not violate the Antideficiency Act

Incremental Funding Policy

- RDT&E executed by incremental funding
- Budgets amount for each FY sufficient to cover obligations expected during that FY
- Each contract limits obligation to costs estimated for the FY
- Funds for succeeding years obligated during later years
- Purpose to maintain close control over R&D by limiting funding

Contract Provisions

Cost Reimbursement Contract

- Limitation of Funds clause
  - limits the obligation to funds allotted to the contractor
  - contract also typically contains schedule for providing funding
  - contractor promises to manage its costs to perform until next increment

Contract Provisions

Incrementally funded fixed price contract

- Limitation of Government's Obligation
  - funds allotted to contract by admin modification identifying funds
  - to prevent funding gaps associated with late appropriations, KO may fund contract performance for 90 days into the next FY with current year's appropriation

Incremental Funding Policy

- For management purposes transforms 2 yr RDT&E appropriations into 1 yr funds
- Legally RDT&E appropriations may be obligated during 2nd year of availability
- Agencies may receive permission to obligate during 2nd year where problems prevent obligating an annual increment during 1st year

ANTIDEFICIENCY ACT

ADA - REFERENCES

- 31 U.S.C 1341 - Prohibits obligation in excess of appropriations
- 31 U.S.C. 1342 - Prohibits voluntary services
- 31 U.S.C. 1511-1519 - Apportionment, administrative, subdivision, creates civil and criminal penalties

ADA - REFERENCES (Con't)

- 31 U.S.C. 1344 - Official Use Only Gov't Vehicles
- OMB Cir A-34, Instruction on Budget execution
- DOD 7000. 14- R, Financial Management Reg
- AFI 65-608, Antideficiency Act

ADA - REFERENCES (Con't)

- DFAS-IN 37-1, Army Finance and Accounting Policies
- NGB Pam 37-1, NGB Financial Management Pam

THE LEVELS OF CONTROL OF FUNDS

- 31 U.S.C. 1341 (statutory control)
- 31 U.S.C. 1512-1513, 1517(A)(1) - Apportionment
- 31 U.S.C 1514 - Administrative division of Appropriation

FISCAL CONTROL AT APPROPRIATION LEVEL

- The First Level
- 31 U.S.C. 1341 - Can NOT make or authorize an obligation in excess of amount available in appropriations. Applies to past appropriations as well
- Can NOT obligate funds in advance unless authorized by law

FISCAL CONTROL AT APPROPRIATION LEVEL (CON'T)

- Can NOT obligate sequestered funds. 31 U.S.C. 11341 (a)(1)(C)(D)

EXCEPTIONS

- Statutes authorize contracts in advance of or in excess of appropriations
  - 41 U.S.C 11 permits DOD to enter into Ks for:
    - Clothing, Subsistence, Fuel, Quarters, Transportation, Medical or Hospital supplies
    - Authorizes execution of K., does NOT authorize disbursement

» (cont'd)

EXCEPTIONS

- (cont'd)
  - Multiyear Contracts
  - Conditioned upon Availability of Funds - Gov't cannot accept supplies or services until KO gives notice that funds are available

SECOND LEVEL - APPORTIONMENT

- 31 U.S.C. 1512, 1513, 1517(a)(1)
- Requirement - 31 U.S.C 1517 requires apportionment of appropriation - President delegated this authority to OMB
- Definition: Apportionment is a distribution by OMB of amounts available in an appropriation

SECOND LEVEL - APPORTIONMENT

- Purpose to prevent obligation at rate that would create need for supplemental
- Deficiency or supplemental is permitted by 31 U.S.C 1515
- Military and civilian pay increase
- Laws enacted after budget submission
- Emergencies involving LIFE or PROPERTY

SECOND LEVEL - APPORTIONMENT

- Prohibitions - can’t make or authorize an obligation or expenditure that exceeds an apportionment 31 U.S.C. 1517 (a)(1)
- WHILE STATUTE DOES NOT PROHIBIT OBLIGATION IN ADVANCE OF AN APPORTIONMENT, AIR FORCE REQUIRES APPORTIONMENT

THIRD LEVEL - ADMIN DIVISION OF APPORTIONMENTS

- 31 U.S.C. 1514 Agency heads must established administrative controls that:
- Restrict obligations
- Enable agency to fix responsibility

THIRD LEVEL - ADMIN DIVISION OF APPORTIONMENTS

- REGULATIONS:
  - OMB Cir A-34, para 31-5, Applies to all agencies
  - DODD 7200.1, Admin Control of Appropriations
  - DFAS-IN 37-1, Finance and Accounting Policy Implementation

ADMINISTRATIVE SUBDIVISION OF FUNDS

- ALLOCATION AND ALLOTMENT FORMAL SUBDIVISION ADA CREATED IF VIOLATED
- AF FORM 401 ALLOTMENT/402 SUBALLOTMENT
- ARMY DA FORM 1323

ADMINISTRATIVE SUBDIVISION OF FUNDS

- ALLOWANCE/TARGET DO NOT CREATE FORMAL SUBDIVISION - NO ADA, PROVIDED HIGHER HQ HAS FUNDS

ANTIDEFICIENCY ISSUES

- PURPOSE STATUTE 31 U.S.C. 1301(A)
  - Violation of the Purpose Statute leads to violation of 31 U.S.C. 1301
- 31 U.S.C. 1341(Excess Expenditure) OR 31 U.S.C. 1517(Apportionment)
- Color of Money

ANTIDEFICIENCY ISSUES

- ADA may be avoidable if proper funds were available at time of original obligation.
- Need to Determine:
  - Proper Funds Were Available at the Time of the Obligation
  - Proper Funds are Available to Correct the Erroneous Obligation

COMMON PURPOSE ISSUES

- O&M FUNDS:
  - $750,000 FOR CONSTRUCTION
  - $250,000 FOR PROCUREMENT
- Violation of “Bona Fide Need Rule” results in violation of 31 U.S.C 1341 OR 31 USC 1517

COMMON PURPOSE ISSUES (CON'T)

- Indemnification Provisions - Opened Ended
  - Violate 31 U.S.C 1341 because cannot determine actual amount of obligation.
  - ADA Violation
- Judgments
  - Courts or Board of Contract Appeals may order a judgment in excess of funds.
  - Not an ADA Violation

COMMON PURPOSE ISSUES

- Option Penalties
  - Separate fees/charges for failure to exercise option violate ADA.
- Augmentation
  - ADA violation if an agency receives, retains and spends money from an outside source.
  - Unless authorized by law
    - i.e., Challenge Program

COMMON PURPOSE ISSUES

- Unauthorized Commitment is not an ADA violation

LIMITATIONS ON VOLUNTARY SERVICES (31 USC 1342)

- Officer or Employee may not accept voluntary services or employ personnel exceeding those authorized by law.
- Cannot accept volunteer services, which require a Federal employee
- Acceptance does not create a legal obligation.

EXAMPLES OF VOLUNTARY SERVICES AUTHORIZED BY LAW

- 5 U.S.C 593 - Volunteer for Alternative Dispute Resolution
- 5 U.S.C. 311 - Student Intern
- 5 U.S.C 1588 - Volunteer Services for DOD
  - Medical Care
  - Museums
  - Natural Resources Program
  - Family Support Activities

EXAMPLES OF VOLUNTARY SERVICES AUTHORIZED BY LAW

- 10 U.S.C 2602 - Red Cross
- 10 U.S.C 4541 - Army Reserve Officer for Training
- 10 U.S.C 10210- Secretaries may accept service of Reserve Officers as Consultants in furtherance of training of Reserve Components
- 33 U.S.C 596C - CORE may accept voluntary services on civil works

APPLICATION OF EMERGENCY SITUATION

- Must Show Immediate Danger Exists
- Does Not Include Government Shutdown as a result of a lack of Congressional Action.

GRATUITOUS SERVICE NOT ADA

- May Accept Free Services from a Person who Agrees in Writing to Waive Payment
- If Federal Employee Performs Work, Cannot Accept Gratuitous Service Agreement - Improper Augmentation of Funds

VOLUNTARY CREDITOR RULE

- Definition - Person Who Uses Personal Funds to Pay for Government Obligation
- General Rule - Agency May Not Reimburse a Voluntary Creditor

VOLUNTARY CREDITOR RULE

- Voluntary Creditor May Recover IF:
  - The Underlying Expenditure is Authorized
  - Claimant Shows a Public Necessity
  - Agency Could Have Ratified the Original Transaction

REPORTING & INVESTIGATION

- FLASH REPORT BY USPFO OR NGB W/IN 15 DAYS FO DISCOVERY TO ARMY/AIR FORCE COMPTROLLER
- INVESTIGATION - AR 15-6, OR AFI 90-301. C,NGB APPOINTS
- PRELIMINARY REVIEW/FINAL INVESTIGATION. C,NGB APPOINTS

REPORTING & INVESTIGATION

- IDENTIFICATION OF RESPONSIBLE PARTY
- CAUSE AND CIRCUMSTANCES
- ADMIN DISCIPLINE IMPOSED
- ACTIONS TAKEN TO CORRECT VIOLATION
- STATEMENT OF RESPONSIBLE INDIVIDUAL

CONTRACTOR RECOVERY WHEN THE ACT IS VIOLATED

- Contract is Null and Void if Contractor Knew or Should Have Known of the Spending Limitation
- Courts Will Not Punish Unless Contractor Had Knowledge

CONTRACTOR RECOVERY WHEN THE ACT IS VIOLATED

- Contractor Entitled to Recover on Theory of Quantum Meruit for Services Rendered
- GAO May Refer Nonpayable Claims to Congress. 31 U.S.C 3702 (d)

QUESTIONS???